

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**CITY OF BLENCOE and LYLE
VANDENHULL**

Wastewater Facility No. 67-09-0-01

Monona County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2011-WW-05

TO: ~~Kim Ruffcorn~~, Mayor - *Kristi Ruffcorn*
City of Blencoe
413 Main Street, PO Box 56
Blencoe, Iowa 51523

Kym Harris - City Clerk / Treasurer

Lyle Vandenhull, Certified Wastewater Operator
City of Blencoe
413 Main Street, PO Box 56
Blencoe, Iowa 51523

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and the City of Blencoe (City) and Lyle Vandenhull for the purpose of resolving wastewater violations that occurred when the City discharged raw waste and the City and Mr. Vandenhull failed to notify the DNR of a bypass. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent should be directed to:

<u>Relating to technical requirements:</u>	<u>Relating to legal requirements:</u>
Alison Manz, Field Office 4	Kelli Book, Attorney for DNR
Iowa Department of Natural Resources	Iowa Department of Natural Resources
1401 Sunnyside Lane	7900 Hickman Road, Suite 1
Atlantic, Iowa 50022	Windsor Heights, Iowa 50324
Phone: 712/243-1934	Phone: 515/281-8563

Payment of penalty to:
Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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II. JURISDICTION

Pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Lyle Vandenhull is the certified wastewater operator for the city of Blencoe, Iowa. The City's wastewater treatment facility was constructed in 1997 and consists of a continuous discharge, two-celled lagoon facility followed by two wetland cells. The wastewater flows via gravity to one of three lift stations. The wastewater is then pumped through a force main until it reaches the lagoon facility approximately one half mile east of Blencoe.

2. On November 19, 2001, DNR issued NPDES Permit No. 6-67-09-0-01 to the City. The permit listed one outfall. The effluent is discharged into McNeil Ditch where it flows to the Monona-Harrison Ditch. The City submitted a timely renewal application.

3. In April 2009, DNR Field Office 4 conducted a routine inspection of the City's wastewater treatment facility. The inspection report was sent to the City in May 2009. Mr. Vandenhull was the City's wastewater operator at the time of the inspection. Included in the inspection report was a copy of the DNR's rules about reporting bypasses. The City was informed that the rules require all bypasses to be reported to the DNR within 12 hours of the onset or the discovery.

4. On August 31, 2010, DNR Field Office 4 received a complaint alleging that the City was bypassing raw sewage during the recent heavy rains. The complainant stated that the bypass had been ongoing for more than a few weeks.

5. On August 31, 2010, Alison Manz, DNR Field Office 4, conducted a complaint investigation. She spoke with Mr. Vandenhull. Mr. Vandenhull stated on August 3, 2010, heavy rains caused basements to backup and the lift station to overflow. The overflow and eventual bypass occurred in an old wet well pit located across from the lift station on the south side of Main Street. Mr. Vandenhull stated the bypass occurred on and off for 2 - 3 days. He stated the bypass equipment was left on site in case future bypasses were necessary. Mr. Vandenhull explained that the wet well pit is not connected to the City's sanitary sewer. A sump pump was used to pump the raw waste from the wet well pit to

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the surface of the ground. A large pipe was placed on the surface to transport the wastewater to a storm water inlet. Mr. Vandenhull claimed he was not aware of the DNR reporting requirements and stated that the City told him to begin bypassing to the storm sewer to prevent further basement backups.

6. On September 27, 2010, DNR issued a Notice of Violation letter to the City for failing to notify the DNR of the bypasses discovered during the August 2010 inspection. The letter informed the City the matter was being referred for further enforcement. The letter also required the City to submit an engineering report regarding the function of the wet well and the east lift station. The report was to be submitted to DNR Field Office 4 by November 1, 2010. To date, the report has not been received.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems, including rules relating to monitoring and reporting requirements. The Commission has done so at 567 IAC chapters 60-64.

2. 567 IAC 63.6(3) states in the event that a bypass or upset occurs without prior notice having been provided pursuant to 567 IAC 63.6(2) or as a result of mechanical failure of acts beyond the control of the owner or operator (other than rain or other precipitation), the owner or operator of the treatment facility or collection system shall notify the DNR by telephone as soon as possible but not later than 12 hours after the onset or discovery. The City and Mr. Vandenhull failed to notify the DNR of the August 2010 bypasses. The above-mentioned facts indicate a violation of this provision.

3. Iowa Code section 455B.186 states that a pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state, except for adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the Director. This discharge of the raw waste was not pursuant to the City's permit. The above facts indicate a violation of this provision.

4. 567 IAC 81.17(1) states that a certified wastewater operator may face disciplinary actions, including the assessment of a monetary penalty, for failing to use reasonable care or judgment or to apply knowledge or ability in performing the duties certified operator. Mr. Vandenhull denied knowing the reporting requirements. However, he was the certified operator during the previous inspection when this requirement was discussed. Additionally, as a certified operator, Mr. Vandenhull should be well aware of the requirements. The above facts indicate a violation of this provision.

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V. ORDER

THEREFORE, the DNR orders and the City and Mr. Vandenhull agree to do the following:

1. The City shall submit a report prepared by a licensed, professional engineer addressing the function of the wet well and the main lift station. The report shall address any service connections to the old wet well, the manner of flow from the old wet well to the City's wastewater treatment facility, and the hydraulic capacities of each lift station and collection system as related to the observed bypass. The report shall be submitted to DNR Field Office 4 within 30 days of the date the Director signs this administrative consent order;
2. The City shall be prohibited from further prohibited discharges;
3. The City and Mr. Vandenhull shall properly report all bypasses in the future and;
3. The City and Mr. Vandenhull shall pay a penalty in the amount of \$2,000.00 within 30 days after the Director signs this administrative consent order.

VI. PENALTY

Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to this provision.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$2,000.00 penalty. The City and Mr. Vandenhull are jointly and severally liable for the penalty; however under the provisions of 567 IAC 81.17(1)(k), Mr. Vandenhull's penalty may not exceed \$1,000.00. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit – It is likely the City gained an economic benefit by not properly treating the raw waste prior to the discharge; however, the amount is likely minimal. Therefore, no economic benefit is being assessed.

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Gravity of the Violation - One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Bypassing raw sewage to a water of the state may cause a water quality violation. Failure to report the bypasses threatens the integrity of the DNR's wastewater program. Therefore, \$800.00 is assessed for this factor.

Culpability - The City and Mr. Vandenhull have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. The City and Mr. Vandenhull were advised of the reporting requirement in a May 2009 letter from the DNR. Additionally, Mr. Vandenhull is a certified operator and should have been aware of the reporting violations. Therefore, \$1,200.00 is assessed for this factor.

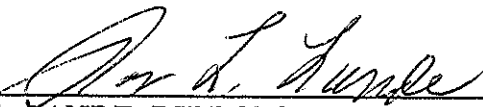
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of the City and Mr. Vandenhull. For that reason, the City and Mr. Vandenhull waive the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE


Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

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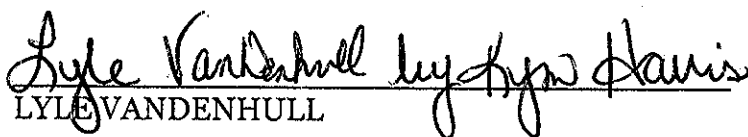
ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 31st day of
March, 2011



CITY of BLENCOE

Dated this 11th day of
March, 2011



LYLE VANDENHULL

Dated this 11th day of
March, 2011

NPDES File #67-09-0-01; Kelli Book; DNR Field Office 4; EPA; I.C.